



## State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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### *Public Hearing Comment Summary*

Public hearings were an opportunity for the public to review and comment on the draft proposal to update Wisconsin's 38 year old Shoreland Management Program. The public hearing draft of NR 115 is a result of three years of work by a dedicated Advisory Committee and Department staff. Eight listening sessions and eleven public hearings around the state clearly indicate that the Department understands the complexity of this issue. Dedication to a complete and thorough public participation process is critical to the success of a revised program. Public hearings provide a means for incorporating the public's values into decisions that affect their lives and also allow the public the opportunity to offer meaningful input into the decision making process. It is intended to produce a code that not only protects the water resources that make Wisconsin so desirable, but also to balance that protection with an understanding of property ownership and introduce a level of flexibility that makes protection of our resources socially and economically feasible.

This document contains summaries of comments resulting from eleven public hearings held around Wisconsin in July and August 2005. Comments were accepted until August 26, 2005. Over 1400 people attended the public hearings and over 12, 000 written comments were received throughout the public comment period.

Four types of comments were received as a result of the public comment period. All carry the same weight. To be considered as a comment, the respondent was only required to provide their name. All written comments were accepted through regular mail or electronic submittal.

Comment types are as follows:

- Written comments received on prepared forms available at the public hearings or the revision update webpage
- Individual letters
- Form letters
- Oral comments received during the public hearings

The department has prepared an excel database which summarizes all the comments received throughout the public comment period. The database is broken into segments of the code and lists all comments related to individual sections. There are also individual pages devoted to miscellaneous comments and comments outside the scope of the NR 115 revision process. Comments have been classified in five different categories including:

- Suggested language modifications
- Neutral (oral comments state "as interest may appear")
- In favor
- In favor, but too permissive
- Opposed, too restrictive

For more information on the NR 115 rule revision process, public hearings or the proposed timeline for 2006 please see our website at: <http://www.dnr.state.wi.us/org/water/wm/dsfm/shore/news.htm> or contact Toni Herkert at [toni.herkert@dnr.state.wi.us](mailto:toni.herkert@dnr.state.wi.us) or at (608)266-0161.

Comments and number of respondents are listed and summarized below.

## ***DEFINITIONS AND APPLICABILITY***

1. Structure - 300 comments requesting changes in the definition. Too broad, overly encompassing and confusing.
2. Ordinary maintenance and repair – 73 comments requesting clarification in definition
3. Structural repair – 72 comments requesting clarification in definition
4. Shoreland wetland zoning – 22 comments indicate wetland definition is confusing and request clarification on permitted uses – can they only be allowed with a permit?
5. Native vegetation – 8 comments requested a definition for native vegetation
6. Back lot – 8 comments requested a definition for back lot
7. Access lot – 8 comments requested a definition of access lot or keyhole development
8. Campgrounds – 16 comments stating the definition of campsite, non-permanent, camping unit and residence need clarification. In addition, expansion principles and lot sizes are not appropriate.
9. Additional definitions requested include: basal area, boathouse, parcel, common ownership, substandard lot, applicable standards, unstable or steep conditions, administrative permit, accessory uses, out lot, best management practices and ground layer vegetation.
10. Comments suggested modifications to the following definitions: mobile home park, gravel, natural areas management activity, residence, mitigation, shoreland zone, impervious surface, open fence, replacement, vegetative buffer, lot, shoreland frontage and land disturbing activities (should be consistent with NR 151)

## ***SETBACKS***

### 11 Specific Opposition Issues

1. Measuring setbacks - NR 115.13(1)(b) – 159 comments indicated the retroactive effective date will cause problems and may make a number of structures nonconforming
2. Permit required - NR 115.13(2) – 154 comments indicated this provision will require property owners to obtain another permit, pay another fee and could prolong the development approval process
3. One stairway per 100 feet of frontage - NR 115.13(4)(b) 154 comments indicated that this should only apply to new lots and that replacing walkways in order to reduce stormwater runoff could be very expensive
4. Signs and flagpoles - NR 115.13(4)(c) – 586 comments opposed to this provision is unnecessary and difficult to enforce
5. Significant on-going erosion – NR 115.13(4)(f) - 153 comments opposed to demonstrating on-going erosion for erosion control structures
6. Steps and landings – NR 115.13(4)(n) – 562 comments indicating size limitations are a clear safety issue
7. Boathouses meeting 75 foot setback – 221 comments indicated this provision would be problematic
8. Accessory structure regulation – 212 comments indicated regulation too strict
9. Prohibiting storage of a boat or ice shanty within 75 feet – 218 comments indicated regulation too strict
10. Definition of OHWM for Lake Michigan and Lake Superior – 43 comments indicated that the current definition is not appropriate to measure setbacks on the Great Lakes
11. Setback averaging – 422 comments requested modifications to this provision ranging from allowing averaging for a garage and vacant lots to be utilized in the averaging calculation

### 2 Specific Issues of Support

1. Greater setback – 20 comments indicated a need to work towards the 75 foot setback and no less and setbacks suggested of 90 and 100 feet
2. Wetland setback – 20 comments indicated that a 10 to 75 foot wetland setback or buffer should be included in NR 115
3. Exempted structures – 11 comments regarding the regulation to be too permissive
4. OHWM and wetland determinations – 4 comments concerned with the regulation potentially allowing a structure closer than 75 feet

General Comments: 74 generally opposed each with minimal mention, 12 neutral, 18 specifically support and 53 comments support but stated regulation was too permissive

Of special note – out of the 1,227 comments received in the setback section, only 2 comments were opposed to the 75 foot setback because it was too restrictive.

## ***LAND DIVISION***

### **2 Specific Opposition Issues**

1. Division of land – create or reconfigure language – 154 comments indicated this provision would add additional regulatory and oversight burdens to already financially strapped county zoning administrations and staff
2. Substandard lots in common ownership – 158 comments indicated that counties currently have the authority to regulate these lots, therefore, the regulation is unnecessary

### **Additional Comments**

1. Reflect standards in section 236.45 Wisconsin Statutes – 4 comments felt consistency with NR 115 and plat review statute was important
2. NR 115.09(2) – 4 comments indicate that the use of the word reconfigure in this section is confusing
3. Streams bisecting properties – 3 comments confused by regulation

**General Comments:** 9 generally opposed, 8 neutral, 4 specifically support and 5 comments support but stated regulation was too permissive

## ***LOT SIZE***

### **4 Specific Issues of Support**

1. Minimum lot sizes – 9042 comments indicated that lot sizes should be 20,000 square feet with a width of 150 feet or more regardless of sewer
2. Multi-family – 40 comments indicated multi-family development should be required to meet the same lot size and density standards as single family development
3. Access lots – 14 comments indicated that access lots should have the same requirements for size, buffers, width, etc as other lots
4. Keyhole development – 9 comments indicated no keyhole development allowed and 10 comments indicated if keyholing is allowed, the lots should meet the same requirements as a residential lot

### **4 Specific Opposition Issues**

1. Multi-family – 243 comments indicate the lot sizes for multi-family development are too large and will make condo developments prohibitively expensive
2. Lot widths – 644 comments indicated that the new mechanism for measuring lot widths would result in new nonconformities
3. Back lots – 89 comments indicate that this regulation is unnecessary in this rule
4. Access lots (keyhole development) – 89 comments indicate that giving counties this flexibility may have a significant adverse impact on the value and usability of lots

### **Additional Comments**

1. Campgrounds – 17 comments indicate more clarity or flexibility is necessary in the lot size section for campgrounds
2. Other lot size suggestions – no less than 40,000 sq. ft., 43,000 sq. ft with 150 ft. of frontage and a 300 ft. depth, 43,560 sq. ft.,
3. Minimum lot sizes – 8 comments indicate that 7,000 sq. ft. for a single family dwelling is too large – other options include 6,000 and 5,000 sq. ft.

**General Comments:** 43 generally opposed, 15 neutral, 5 specifically support and 35 comments support but stated regulation was too permissive

## ***VEGETATIVE BUFFERS***

### 7 Specific Issues of Support

1. Primary buffer – 9015 comments indicated that the primary buffer should be increased to 50 feet or more
2. Primary buffer – 11 comments indicated that the primary buffer should be increased to 75 feet or more
3. Wetland buffer – 9,035 comments indicated that wetland buffer standards should be required in NR 115
4. Vegetation plans – 15 comments indicated strong support for vegetation plans
5. Lawns – 10 comments indicated that existing lawns should be replaced with natural vegetation within the primary buffer
6. Native vegetation – 13 comments indicated that the final rule should require a diversity of native vegetation in the primary buffer
7. Access corridor – 7 comments stated the corridor requirements were too large and fragmented habitat. One access corridor is sufficient regardless of the frontage.

### 5 Specific Opposition Issues

1. Vegetation plans – 619 comments indicated that this requirement will add increased costs and could unreasonably delay the construction process. Counties do not have the staff or expertise to properly review such plans
2. Multi-unit development plans – 155 comments indicated the new formula will create more nonconforming projects and the costs for development and implementation would be significant and ongoing
3. Access Corridor – 162 comments indicated that the size limitations on access corridors is too small for smaller lots
4. Primary buffer – 7 comments specifically objected to establishing vegetation in the primary buffer

### Additional Comments

1. Ban on fertilizer – 2 comments indicated a desire to ban the use of any fertilizer within the 75 foot setback area
2. Rivers – 32 comments indicated that rivers should be treated differently than lakes with regards to the vegetative buffer requirements. Buffer requirement is not appropriate for small lots on rivers.
3. Administration and Enforcement – 7 comments indicated that the vegetative provisions would be difficult to administer and enforce due to county staffing and expertise
4. Flexibility – 6 comments indicated that the counties need more flexibility in this area
5. Primary buffer – 10 comments indicated that all property owners should be required to maintain or replace vegetative buffers and that all properties should have the same buffer requirements
6. Nuisance – 15 comments indicated that vegetative buffers will increase undesirable species such as mosquitoes, snakes and other insects and pests.

General Comments – 19 comments are general housekeeping items, 17 generally opposed, 3 neutral and 16 comments support but stated regulation was too permissive.

## ***IMPERVIOUS SURFACES***

### 3 Specific Issues of Support

1. Limit – 9,041 comments indicated that impervious surfaces should be limited to 20% of the lot
2. Limit – 19 comments indicated that impervious surfaces should be limited to 10-15% of the lot – some said within 200-300 feet of the OHWM
3. Cap – 10 comments indicated that there should be a cap on the amount of impervious surfaces regardless of the type of development
4. More protective – 7 comments indicated that the regulations are necessary but the section is too permissive (did not provide an alternative)

### 3 Specific Opposition Issues

1. Limit – 385 comments were in opposition to a statewide impervious surface standard and the trigger for revegetation
2. Limit – 173 comments indicated that impervious surface limits will place unreasonable limit on the size of homes on and near waterfront property

3. Zero increase – 92 comments indicated that this stormwater runoff standard will cost homeowners thousands of dollars

#### Additional Comments

1. Best management practices – 6 comments supported implementation and maintenance of BMPs and cautioned the need for appropriate minimum standards of BMPs to gauge effectiveness
2. Definitions – 24 comments on the need for greater clarification for definition of impervious surface
3. Runoff – 3 comments indicated that consideration should be made as to whether the surfaces contribute to runoff
4. Small lots – 6 comments indicated that smaller lot sizes and river lots need to be taken into consideration
5. Trigger – 2 comments indicated that the trigger for mitigation should be reduced to 15% impervious cover
6. Primary buffer – 3 comments indicated that no new impervious surfaces should be allowed within 35 feet
7. Others: Different slopes should have different standards, regulations should distinguish between rater and volume of discharge, concerned about time delays of permits for this section

### ***LAND DISTURBANCES***

#### 3 Specific Issues of Support

1. Activities – 11 comments indicated that no land disturbing activities near the water or wetlands should never be approved
2. Plans – 5 comments indicate that the need for erosion control and vegetation plans is strongly supported, but would favor firmer restrictions
3. Slopes – 4 comments indicated that filling and grading activities should be restricted on steep slopes

#### 3 Specific Opposition Issues

1. Erosion control and vegetation plans – 153 comments indicated that this provision could be very expensive
2. Application – 3 comments indicated that this provision should only apply to riparian lots and not the entire shoreland zone
3. Conservation – 4 comments indicated that vegetative buffers, in some cases, can create a shoreland unfit for sound conservation practices

#### Additional Comments

1. Permits and exemptions – 13 comments pertained to requiring too many permits, not exempting enough structures or exempting too many structures
2. Other activities – 4 comments indicated that soil compaction and tree damage are associated with land disturbing activities and are not accounted for in this section
3. Staffing – 3 comments indicated that the staff requirements would be excessive therefore making the provision difficult to enforce and monitor erosion control and vegetation plans
4. Flexibility – one comment offered the suggestion to allow minimal land disturbing activities without triggering an erosion control or vegetation plan.

### ***NONCONFORMING***

#### 5 Specific Issues of Support

1. Maintenance and Repair – 500 comments indicated that NR 115.21(4)(a)and(b), the allowance of ordinary maintenance and repair, is a good change
2. Replacement – 395 comments indicated that NR 115.21(4)(d), allowing replacement of some nonconforming structures, will greatly benefit property owners by protecting investments in their homes
3. Replacement and expansion – 41 comments indicated that NC principal structures should not be allowed to be replaced or expanded if there is a legal building site on the lot
4. 50% rule – 14 comments indicated that counties need more than the 50% rule to regulate proposed changes to principal structures
5. Appendix A – 11 comments indicated that appendix A is problematic because the maximum footprints were too large considering people can easily build up to three stories. There should be a 1,200 to 1,500 sq. ft. maximum

### 9 Specific Opposition Issues

1. Boathouses – 222 comments indicated that prohibiting the alteration or replacement of a boathouse foundation unless moved to a compliant location is problematic
2. NC use provision – 154 comments indicated that this prohibition exceeds the DNR's authority and the statutory protections afforded to property owners under the 50% rule
3. NC accessory structures – 154 comments indicated that the prohibition on structural alteration unless mitigation is implemented is more onerous than the current 50% rule
4. Structural alteration – 154 comments indicated the prohibition on structural alteration for principal structures unless mitigation is implemented is more onerous than the current 50% rule
5. Expansion – 154 comments indicated that the proposed footprint maximums for structures between 35 and 75 ft will severely restrict the size of expansions allowed for NC structures
6. Straddling – 155 comments indicated the need to allow more expansion beyond the 75 foot setback
7. Minimum lot size – 568 comments indicated that the minimum lot size of 7,000 sq. ft. for expansion and replacement is both arbitrary and unfair
8. Campground expansions – 843 comments indicated that only the portion of the campground being expanded should have to come into compliance with the revised NR 115.
9. Camping units – 836 comments indicated that camping units within the shoreland zone should be able to be expanded to industry specific sizes essentially replacing and existing unit

### Additional Comments

1. Additional provisions – 11 comments indicated that there should be provisions for distinguishing between NC uses, structures and substandard lots and standards applicable to each circumstance
2. Organization – 8 comments indicated that this section of the code needs to be clearer. As written it is difficult to follow and could be left to interpretation, therefore, making it difficult to enforce
3. Local control – 6 comments indicated that local government should decide regulations for NC structures
4. Improvement – 4 comments indicated that in relation to NC structures, the revised code is a significant improvement over the existing NR 115 provision

### Points to Ponder

- Footprint expansion limited to one-time per property, not per owner
- Could the DNR provide incentives for the removal of nonconforming structures
- Minimum size to expand should be defined by the minimum principal structure size of the zoning district where the structure resides
- It is better to apply the foundation restriction only to those accessory structures that are buildings
- The rule is unclear as to whether a landowner can elect to not replace portions of the original structure closest to the water to gain additional square footage for expansion
- Minimum lot size for expansion and replacement should be 6,500 sq. ft. consistent with the model ordinance

General Comments: 33 generally opposed, 11 neutral, 11 specifically support and 25 comments support but stated regulation was too permissive

### **MITIGATION**

#### 2 Specific Issues of Support

1. Septic system – 171 comments indicated that inspection and upgrading of septic systems is a good definitive mitigation standard
2. Recording – 10 comments indicated that mitigation should be contractual

#### 3 Specific Opposition Issues

1. Mitigation – 257 comments indicated that the requirement is expensive, unfair, too subjective and will create uncertainty among property owners
2. General – 212 comments indicated that the mitigation requirements are too prescriptive and they remove local governments' ability to apply standards appropriate to local conditions

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3. Recording – 7 comments indicated that recoding and monitoring of shoreland buffer restorations would be difficult

### Additional Comments

1. Technical standards are needed for mitigation and the public needs easy access to them
2. Counties should be provided with state funding for additional staff needed to implement the new rules
3. The concept of mitigation should be evaluated to see if results are in the public's benefit
4. Preservation and maintenance is subjective and will cause confusion
5. Buffer mitigation will never compensate for buffer area reduction and increased development density
6. Erosion control, conservation, safety and health should become the crucial factual determination in any mitigating standard
7. Mitigation should only apply to riparian lots
8. Specify that the cost of mitigation cannot exceed a specified fraction (5%) of the overall cost of the project

General Comments: 16 generally opposed, 5 neutral, 9 specifically support and 6 comments support but stated regulation was too permissive